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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Norfolk Southern Railway Company

Plaintiff,

v.

**Kinder Morgan Bulk Terminals, LLC
Kinder Morgan Liquid Terminals, LLC
Defendants.**

CASE NO:

COMPLAINT

Plaintiff Norfolk Southern Railway Company, by and through its attorneys, files this Complaint against defendants Kinder Morgan Bulk Terminals, LLC and Kinder Morgan Liquid Terminals LLC, and in support thereof, avers as follows:

PARTIES

1. Plaintiff, Norfolk Southern Railway Company (“Norfolk Southern”) is a corporation incorporated under the laws of the Commonwealth of Virginia with its principal place of business in Norfolk, Virginia.

2. Norfolk Southern operates as an interstate rail carrier subject to the jurisdiction of the U.S. Surface Transportation Board (“STB”), and is governed by the provisions of the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.*

3. Kinder Morgan Bulk Terminals, LLC (“KM Bulk”) is a Louisiana limited liability company with its principal place of business in Houston, Texas. The sole member of the company is Kinder Morgan Operating L.P.

4. Kinder Morgan Liquid Terminals, LLC (“KM Liquid”) is a Delaware limited liability company with its principal place of business in Houston, Texas.

5. KM Liquid and/or KM Bulk operate a facility in Perth Amboy and Carteret, New Jersey as well as facilities located in Pennsylvania, South Carolina, Illinois and Georgia.

JURISDICTION

6. Jurisdiction is based upon 28 U.S.C § 1337 as this is a cause of action arising under the Interstate Commerce Act, 49 U.S.C. §§10101 *et seq.*

VENUE

7. Venue properly lies in this district pursuant to 28 USC § 1391(b) because the defendant is subject to personal jurisdiction in this judicial district, and a substantial part of the events or omissions giving rise to the plaintiff’s claims occurred in this judicial district.

CAUSE OF ACTION

Failure to Pay Demurrage Charges

8. As mandated by 49 U.S.C. § 10746, Norfolk Southern established rules related to the assessment and computation of rail car demurrage and storage charges (“Demurrage Charges”).

9. The rules, which set forth the manner in which Demurrage Charges are accrued and assessed, are set out in Norfolk Southern tariffs, which are public tariffs posted on the internet.

10. Pursuant to the terms of its governing tariffs, Norfolk Southern agreed to and did release rail cars into the possession of KM Bulk and KM Liquid (together “Kinder Morgan”), and Kinder Morgan accepted delivery of said rail cars.

11. Prior to the delivery of the aforementioned cars, Norfolk Southern provided Kinder Morgan with actual written notice of the terms of Norfolk Southern’s demurrage tariffs.

12. Kinder Morgan failed to return possession of railroad-controlled rail cars to Norfolk Southern within the allotted “free time” prescribed by the demurrage rules, and as a result accrued demurrage charges in accordance with the terms of the governing tariff.

13. Additionally, Kinder Morgan stored privately owned railcars on Norfolk Southern track, and as a result accrued Demurrage Charges in accordance with the terms of Norfolk Southern’s governing demurrage tariffs.

14. Norfolk Southern submitted invoices to Kinder Morgan for the demurrage charges and Kinder Morgan received these invoices.

15. Norfolk Southern has performed all conditions precedent necessary to be entitled to payment of the charges from Kinder Morgan.

16. Although demand has been made for payment of the demurrage charges, Kinder Morgan has failed and refused to pay said charges.

WHEREFORE, Plaintiff Norfolk Southern Railway Company respectfully demands that judgment be entered in its favor and against defendants Kinder Morgan Bulk Terminals, LLC and Kinder Morgan Liquid Terminals LLC in an amount to be determined at trial including any further demurrage and storage charges that may accrue

up until the time of trial, along with prejudgment interest, finance charges, and costs and attorneys' fees pursuant to Norfolk Southern's Tariff 6400 and other tariffs, and any other relief as the Court may allow.

KEENAN COHEN & MERRICK P.C.

By: /s/Jeffrey D. Cohen
Jeffrey D. Cohen
Eric C. Palombo

Dated: September 18, 2020